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E.O. 12958: N/A
TAGS: [ETRD](#) [KIPR](#) [MY](#)
SUBJECT: IN VITRO DIAGNOSTIC PATENTS IN MALAYSIA

Ref: Weisel-Finkbeiner 7/27/2007 email

¶1. (U) Acting EconCouns met August 16 with Professor Rohazar Wati Zualalcobley, Deputy Director General of the Malaysian Intellectual Property Corporation (MyIPO) to discuss Malaysia's approach to patents of in vitro diagnostic procedures, per ref request. Although Rohazar acknowledged that Malaysia patent law prohibits the patenting of diagnostic procedures practiced on human beings or animals, she said this would not necessarily mean that patents of in vitro diagnostics would be prohibited.

¶2. (U) Rohazar explained that patent applications involving particularly innovative products and procedures, such as in vitro diagnostics, are referred to an interagency committee (led by MyIPO) to examine, inter alia, the potential impact of the patent on Malaysia's development goals as well as its possible effect on public morals. The committee also weighs the approaches that other countries make towards similar patent applications. In the case of an in vitro diagnostic patent application, Rohazar suggested that it would be considered by and interagency team with representatives from the Ministry of Science, Technology and Industry (MOSTI), the Ministry of Natural Resources and the Environment (MONRE), the Ministry of Health and the Department of Islamic Development (JAKIM). Relevant issues such as the impact on Malaysia's nascent medical tourism industry, and its efforts to attract more advanced medical technology industry to Malaysia, would be of particular relevance to the committee. A recommendation would then be made to the Minister of Domestic Trade and Consumer Affairs (which oversees MyIPO) whether the processing of such a patent application should move forward.

¶3. (U) Rohazar emphasized that Malaysia did not impose an a priori ban on in vitro diagnostic patents, and that such applications would be considered case-by-case by the interagency committee. The fact that MyIPO might deny a patent for one in vitro diagnostic procedure would not mean that other such patent applications would be denied. Rohazar noted that the GOM likewise considered patents that were related to other areas in which the patent law technically prohibits patents, such as business methods. Rohazar stated that patent applicants needed to carefully word their applications when they relate to areas in which patents are prohibited, in order to make clear to MyIPO (and potentially the interagency committee) why they believe such an application did not fall under the relevant patent prohibition.

¶4. (SBU) Comment: MyIPO's case-by-case approach regarding such innovations as in vitro diagnostics is emblematic of the GOM's frequent approach to innovation, which is to seek to accommodate such developments without taking the more difficult step of amending Malaysian laws and regulations. While the GOM has a long history of supporting such exceptions in the interest of furthering

high-priority goals (such as development of knowledge-based industry), at the same time such half-measures inhibit the degree of innovation that Malaysia would attract if it would make such flexibility permanent. End comment.

LAFLEUR